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Before the Public Service Commission of Utah

In the Matter of Carbon/Emery Telcom, Inc.'s Application for an Increase in Utah Universal Service Fund Support.	Docket Nos. 15-2302-01 and 15-053-01
In the matter of UBTA-UBET (dba Strata Networks) Application for an Increase in Utah Universal Service Fund Support.	Position Statement Regarding Utah Code Ann. § 54-7-12(3) Application to UUSF Cases

Pursuant to this Commission's September 23, 2015, Order in Dockets Nos. 15-2302-01 and 15-053-01, requiring the parties in these dockets to submit Position Statements on this issue of whether Utah Code Ann. § 54-7-12(3)'s 240 day period for a decision in a general rate case applies to Utah Universal Service Fund (UUSF) case, the Utah Office of Consumer Services (Office) submits this Position Statement. In sum, the Offices position is that Section 54-7-12(3)'s 240 day period for decision does not apply to UUSF cases because UUSF cases do not set rates but provide a subsidy through a statutory created fund.

The procedures for increases or decreases in rates are set out in Section 54-7-12. Section 54-7-12(1)(a)(i) provides:

“Base Rates” means those charges included in a public utility’s generally applicable rate tariffs, including;

- (A) a fare;
- (B) a rate;
- (C) a rental;
- (D) a toll, or
- (E) any other charge generally applicable to a public utility’s rate tariffs.

Accordingly, section 54-7-12 in general, and section 54-7-12(3) in particular, refer to increases or decrease in charges “generally applicable to a public utilities rate tariffs.” Rate tariffs set the amount that a public utility charges customers for public services. A distribution from the Utah Universal Service Fund does not impact the charges the amount an incumbent telephone corporation charges its customers and therefore the 240 day time limit in section 54-7-12(3) is not applicable in UUSF cases that are not combined with a request to increase or decrease rates.<sup>1</sup> Here, neither Emery/Carbon nor Strata have requested an increase or decrease in rates with their applications for increase in UUSF support.

The fact that section 54-7-12(3) does not apply to the subject cases is further demonstrated by the application of section 54-7-12(3)(b)(i), which provides that in the event that the Commission does not submit an Order in a rate case within the 240 days window “the public utilities proposed rate increase or decrease is final.” Without a proposed rate increase or decrease to become final, there is no statutory consequence for the failure to meet the 240 day deadline and section 54-7-12(3)(b)(i) is rendered meaningless. This result would be contrary to

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<sup>1</sup> Although a distribution for the Universal Service Fund conceivably may have some effect on a phone company’s future rate making proceeding, this fact does not change a UUSF case into a ratemaking case. *See generally, Cellular Telecomms. Indus. Ass’n.v. FCC*, 168 F.3d 1332, 1336 (D.C. Cir. 1990)(upholding the FCC’s determination that a state commission’s imposition of universal service contribution requirements on wireless carriers did not amount to “rate regulation” preempted by 47 U.S.C. § 332(C)(3), even though such requirements “impact the rates charged to customers.”)

standard rules of statutory construction. *See Hall v. Utah State Dep't of Corr.*, 2001 UT 34, ¶ 15, 24 P.3d 958. (Court must give effect to every provision of a statute and avoid an interpretation that will render portions of a statute inoperative.)

### **CONCLUSION**

Section 54-7-12(c)'s 240 day window for the Commission to act in rate cases does not apply to UUSF cases.

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